

JUN 22 2006**CATHY A. CATTERSON, CLERK**
U.S. COURT OF APPEALS**NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****RICARDO TORRES-ACOSTA,****Defendant - Appellant.****No. 04-10487****D.C. No. CR-03-02048-RCC****ORDER***

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

The memorandum disposition filed on November 14, 2005 is amended to add the following numbered paragraph on page 3:

6. The record does not reflect that the district court was of the view that it lacked authority to grant a downward departure. In such a circumstance, we lack jurisdiction to review the denial of a downward departure. *See United States v. Govan*, 152 F.3d 1088, 1095 (9th Cir. 1998).

With this amendment, Appellant's petition for panel rehearing filed on December 9, 2005, is DENIED.

* This order is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

No further filings will be accepted in this case.